



October 22, 2001

Mr. Ricardo Gonzalez
City Attorney
City of Edinburg
Oxford, Oxford & Gonzalez
P. O. Box 1079
Edinburg, Texas 78540-1079

OR2001-4780

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153699.

The City of Edinburg (the "city") received a request for a specified letter of agreement, specified guidelines, drug testing forms, the type of computer software that N.T.C. uses to select the employees for random drug testing, and the name of the collector who took the urine specimens. The requestor also asks for "a copy of the list of officers that were selected for the random drug test on July 24, 2001. This copy can exclude all the names of the officers with the exception of my name, who was selected first for the drug test." In your letter of August 15, 2001 to the requestor, you state that you are releasing the letter of agreement, the specified forms, and the name of the collector. You claim that the list of officers that were selected for the random drug test and social security numbers are excepted from disclosure under section 552.101 of the Government Code. You also advise this office that you believe that the type of software used by N.T.C. may involve trade secrets. You state that you have notified N.T.C. about the request as required by section 552.305(d).¹ We have considered your exception and reviewed the submitted information.

You state, in your letter of August 15 to the requestor, that you have no copy of the specified guidelines. You also state that you do not have any information regarding the type of computer software that N.T.C. used to select the employees for random drug testing. The Public Information Act (the "Act") only applies to information in existence. *See Gov't*

¹See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). However, a governmental body must make a good faith effort to relate a request for information to information that it holds. *Id.* Therefore, if you do not have the specified guidelines or any information about the type of computer software, you need not comply with these portions of the request. We note that as of the date of this letter, we have not received any comments from N.T.C.

Next, you contend that the list of officers selected for random drug testing is excepted under section 552.101 in conjunction with common law privacy. The requestor, however, specifically excludes the names of the officers. Thus, the names of the officers are not responsive to the request. Because the names of the officers are not responsive, we need not address your exception for this information, and you need not release the names of the officers. As for the requestor's name, the requestor has a special right of access to information that is protected from public disclosure by laws intended to protect his privacy interests. *See* Gov't Code § 552.023. Thus, you may not withhold the requestor's name under section 552.101 in conjunction with common law privacy.

The submitted list also contains social security numbers. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to a "peace officer" as set forth in article 2.12 of the Texas Code of Criminal Procedure. Therefore, the city must withhold the submitted social security numbers under section 552.117(2) of the Government Code. The requestor, however, has a special right of access to his social security number under section 552.023. Thus, you may not withhold the requestor's social security number.

In conclusion, you need not release the names of the officers, because this information is not responsive to the request. You must withhold the social security numbers under section 552.117(2) of the Government Code. However, you must release the remaining submitted information, including the requestor's name and social security number.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this

ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153699

Enc: Submitted documents

c: Mr. Raul Garcia
2009 Norma Lane
Edinburg, Texas 78539
(w/o enclosures)

Mr. Ernest Aliseda
Law Office of Antonio Villeda
5414 North 10th Street
McAllen, Texas 78504
(w/o enclosures)